

Notice of Allowability

Application No.

09/924,340

Examiner

Marina Miller

Applicant(s)

BEJANIN ET AL.

Art Unit

1631

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 11/14/2005.
2. ☒ The allowed claim(s) is/are 34-37 and 47-49.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☒ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date <u>1/3/06</u> . |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input checked="" type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

DETAILED ACTION

Examiner's amendment

Authorization for this examiner's amendment was given in a telephone interview with Frank C. Eisenschenk, an attorney for applicants, on 01/03/2006.

Cancel claims 38-40.

The application's title has been changed by the examiner to reflect the matter claimed in the allowed claims. The new title is "An isolated human vCOL16A1 polypeptide and fragments thereof."

Examiner's Comments Regarding Requirement for Deposit of Biological Material

Applicants are required to comply with 37 C.F.R. 1.808, particularly section (a)(2), regarding availability of deposited material to the public.

Reasons for Allowance

The following is an examiner's statement of reasons for allowance:

Amendments and arguments filed by applicants on 11/14/2005 have overcome rejections under 35 U.S.C. 101, 102, and 112, first and second paragraphs.

Applicants argue that the instant invention has patentable utility because polypeptide SEQ ID NO: 58 represents a splice variant of the human collagen. The claimed splice variant exhibits most of the characteristics of the collagen proteins, which can be used as injectable

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biomaterial or in cosmetic compositions. The claimed splice variant of the human collagen, which exhibits structural characteristics of the collagens, has patentable utility because all members of the collagen family exhibit similar properties (*i.e.*, these proteins constitute the major extracellular matrix components of connective tissue) and may be used in cosmetic compositions and as an injectable material.

In light of the applicants' amendment, the rejection of claims 37 and 49 under 35 U.S.C. 112, first (new matter) and second paragraph, and 102(b) is withdrawn.

Any comments considered necessary by applicants must be submitted no later than the payment of the issue fee and, to avoid processing delay, should preferably accompany the issue fee. Such submission should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Claims 34-37 and 47-49 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Miller whose telephone number is (571)272-6101. The examiner can normally be reached on 8-5, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel, Ph. D., can be reached on (571)272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Marina Miller
Examiner
Art Unit 1631

MARJORIE A. MORAN
PRIMARY EXAMINER

Marjorie A. Moran
1/9/06

MM